

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2015 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

S.S.PARMAR & ORS.

Versus

STATE OF GUJARAT AND ANR.

Appearance:

MR PV HATHI for Petitioners

MR NN PANDYA for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 15/07/96

ORAL JUDGMENT

Heard learned counsel for the parties. The grievance of the petitioners is that the action of the respondents to discontinue the benefits of the Resolution dated 4th August 1969, is illegal.

2. Under the Resolution dated 4th August 1969, on the recommendations of the pay commission, the law graduates deputed to the Legal Department as Assistants

were ordered to be given higher start of Rs.230/- in the scale of the Assistants recommended by the pay commission, i.e. 200 - 490. It is not in dispute that the Desai Pay Commission has not recommended for giving of higher start to the Assistants (law graduates) recruited in the Legal Department. The recommendations of the Desai Pay Commission were accepted by the Government and the same were given effect from 1.1.73. Those recommendations have been given legal form by framing the Rules under Article 309 of the Constitution of India, known as the Gujarat Civil Services (Revision of Pay) Rules, 1975. The petitioners' counsel is in agreement that the Rules aforesaid were published in the Gazette on 21st October 1975.

3. All the petitioners were appointed as Assistants on or after 29th November 1975, i.e. after coming into force of the aforesaid Rules. The recommendations of the earlier pay commission came to an end on 31st December 1973 and the Resolution dated 4th August 1969 had life upto 31st December 1972 only. The counsel for the respondents contended that the benefits of the higher start were recommended by the commission in the year 1969 as there was dearth of law graduates.

4. In view of these facts, no legal right has accrued to the petitioners to pray for the enforcement of the Resolution dated 4th August 1969. It is true that three petitioners were given benefit of higher start, but that was under misconception and it was an error which has been committed. Merely because by mistake some benefits have been given to the petitioners No.1 to 3, for which they were not entitled, it does not give any legally enforceable right to these petitioners. In the aforesaid Rules 1975, there is no provision of giving of higher start of pay to law graduates when they have been appointed as Assistants in the legal side of the Legal Department. Further, the validity of Rules 1975 has also not been challenged.

5. The counsel for the petitioners admitted that in the advertisement which has been issued for calling on applications for the appointment on the post of Legal Assistants in the Secretariat by the G.P.S.C., nowhere it has been mentioned that the law graduates will get higher start of pay-scale. The Resolution on which petitioners' claim is based has no force after 31st December 1972, as discussed above. The counsel for the petitioners has further admitted that now the new Rules have been framed for the appointment on the post of Legal Assistants on legal side in the Legal Department in the subordinate

Secretariat Services Clause III and the minimum qualification prescribed is LL.B. The counsel for the petitioners further admitted that the petitioners have been given the pay-scale of 1640-29-00 from 1.1.86, the pay-scale which has been prescribed for the Assistants (Legal) in the Ministry of Law and Justice of the Central Government.

6. Taking into consideration the facts of this case in totality and the fact that the minimum qualification for the appointment on the post of Legal Assistant at the relevant time was degree in Arts, Law, Science, Agriculture, etc., none of the legal rights of the petitioners have been infringed. In the result, this Special Civil Application fails and the same is dismissed. Rule is discharged.

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(sunil)